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BEFORE THE  
Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Limitations on Commercial Time on )  
Television Broadcast Stations )

MM Docket No. 93-254

COMMENTS OF  
WIIB-TV, BLOOMINGTON, INDIANA

WIIB-TV, Bloomington, Indiana ("WIIB-TV"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments on the Notice of Inquiry ("NOI") in the above-referenced docket.<sup>1/</sup>

As discussed below, WIIB-TV believes that the public interest would not be served by establishing limits on the amount of commercial matter broadcast by television stations. Specifically, commercial time limitations on television broadcast stations would force the broadcast affiliates of the Home Shopping Network ("HSN"), such as WIIB-TV, to change format or cease operations entirely. Such limitations would preclude the broadcast of the very programming run on those stations, despite the facts that the Commission has already found this programming to be in the public interest, that the public desires this

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<sup>1/</sup> Notice of Inquiry, Limitations on Commercial time on Television Broadcast Stations, MM Docket No. 93-254, 8 FCC Rcd. 7277 (1993).

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programming, and that the licensees relied on the Commission's rules in affiliating with HSN. Furthermore, this action would unreasonably favor one method of distribution (home shopping on cable) over another (home shopping over the air), thus depriving the home shopping market of competition and forcing the home shopping viewer to subscribe to cable. WIIB-TV therefore urges the Commission not to attempt any new regulation of the commercial practices of television broadcast stations.

#### Discussion

As noted in the NOI, the issue of whether home shopping stations serve the "public interest, convenience and necessity" was addressed by the Commission this past summer. NOI, 8 FCC Rcd. at 7278. After an extensive notice and comment proceeding, the Commission affirmatively concluded that "broadcast stations that are predominantly used for the transmission of sales presentations or program length commercials serve the public interest." Report and Order, Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992: Home Shopping Station Issues, 8 FCC Rcd. 5321, 5330 (1993), petition for reconsideration pending. The Commission based this decision on the following factors:

- 1) home shopping stations have significant viewership and the format's continued success and expansion would not occur without significant viewer support, id. at 5322;

2) the level of competing demands for the spectrum utilized by home shopping stations is minimal, id. at 5323;

3) the existence and carriage of home shopping broadcast stations provides significant competition for nonbroadcast services supplying similar programming, id. at 5326;

4) the broadcast market has controlled the level of commercialization after the deregulation of commercial time limits in 1984, id. at 5326-27;

5) home shopping stations provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner, id. at 5327;

6) home shopping stations have been able to meet all of the Commission's standards for license renewal (public affairs programming responsive to issues confronting the local community, indecency, political broadcasting, emergency broadcasting), id.;

7) requiring home shopping stations to substantially modify their format would have a destabilizing impact on the minority ownership of television stations, id. at 5328; and

8) the home shopping affiliation is important to the efforts of small and marginal stations to continue to operate and serve the public interest, id.

There is no basis for altering any of these conclusions, especially so soon after making them. HSN affiliates continue to provide the public with 24 hours of

entertainment and information along with the "commercial" aspects of the programming. People are not forced to watch home shopping programming, and are not forced to make home shopping purchases. On the contrary, with the mounting pressures of the two income household, home shopping channels have become as much a part of life as the shopping mall. Clearly, home shopping programming responds to a strongly felt public need -- if it did not, these stations would not continue to succeed in the vast plethora of programs from which the public can choose.

Furthermore, the home shopping format on broadcast stations evolved as a result of the deregulation of commercial time in 1984. The Commission itself envisioned the development of innovative programming as a result of deregulation,<sup>2/</sup> and viewed home shopping formats as an example of the "license experimentation and regulatory flexibility" encouraged by the 1984 deregulation.<sup>3/</sup> As a result, struggling stations terminated numerous programming contracts and affiliated with HSN to take advantage of the format's success. If the Commission suddenly reversed its rules and reimposed commercial time limits, those stations

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<sup>2/</sup> See Report and Order, Commercial TV Stations, 98 F.C.C.2d 1076, 1105 (1984) ("It is our intention that this change promote licensee experimentation and otherwise increase commercial flexibility."), recon. denied, 104 F.C.C.2d 357 (1986), aff'd in part and remanded in part sub nom., Action for Children's Television v. FCC, 821 F.2d 741 (D.C. Cir. 1987).

<sup>3/</sup> Memorandum Opinion and Order, Family Media, Inc., 2 FCC Rcd. 2540, 2542 (1987).

would not only lose their successful HSN affiliation, but would have only the syndication leftovers from which to fill their program day (if they even try to stay on the air). It would be unconscionable for the Commission to leave these stations in precarious positions after they detrimentally relied on the Commission's rules and policy statements.

Finally, as the over-the-air stations' market shares continue to erode, it simply makes no sense for the Commission to regulate a programming format with such high public demand out of over-the-air existence. As noted above, such a result would force numerous current HSN affiliates, many of which are owned by minority and small business owners, to cease operations, thus serving no public benefit whatsoever. And, such a result would deprive the home shopping public of the choice between receiving its programming over the air for free and subscribing to cable. In essence, the government would be favoring one method of programming distribution over another, and consequently depriving the market of competition.

Therefore, there is no public interest benefit to limiting commercial time on broadcast television stations, for this obligation would, in essence, put stations that the FCC has determined operate in the public interest out of business. It would be arbitrary and capricious for the FCC to almost simultaneously decide that home shopping broadcasting stations serve the public interest, then regulate them out of existence by deciding that it is in the

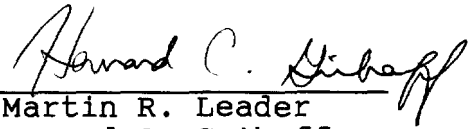
public interest to limit the amount of commercial matter that a television station can broadcast.

Conclusion

For the above stated reasons, WIIB-TV respectfully urges the Commission not to attempt any new regulation of the commercial practices of television broadcast stations.

Respectfully submitted,

WIIB-TV

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